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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,347	03/27/2001	Bruce H. Prince	52372-00002	1204

30223 7590 08/06/2002

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 08/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/818,347

Applicant(s)

PRINCE, BRUCE H.

Examiner

Susan C. Alimenti

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritchey (USPN 5,493,997).

Ritchey discloses a device that is the same as that which is cited in claims 1-5. In Figures 7 and 8 Ritchey shows a housing comprising a hinged door (62), attached to flat sidewalls (22, 24, 26, 28) enclosing a hollow interior. A hole (30) is located on one sidewall (28) for allowing small animals or insects to enter in from outside. In column 4, lines 52-56 Ritchey describes how the hole diameter can be adjusted to much smaller sizes. The choice to use plastic or wood, would provide a smooth interior surface. It is further noted that intended that the intended use of Ritchey's device as a birdhouse is irrelevant, as it provides the structure necessary to trap carpenter bees as described by the Applicant.

3. Claims 8, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Rimback (USPN 5,685,109).

Rimback discloses a trap for flying insects that meets all the limitations set forth in claims 8, 11 and 12. In Figure 1 it can be seen that the trap comprises two side panels (12,14), each including a hole (40,42) therein for the entrance of an insect, and an integral latching means (56) latching the two sidewalls together. Rimback's trap is made of plastic, which has a smooth

Art Unit: 3644

surface and further comprises hinges (18,20) that allow for the device to be opened and closed to repeatedly remove the contents therein.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchey as applied to claims 1, 2, 4 and 5 above, and further in view of Schneidmiller (USPN 4,551,941).

Ritchey discloses the claimed invention except the color of the exterior surface around the hole is not specified. Ritchey, however, does disclose in column 4, lines 9-12 that a multitude of colors and materials could be used in the fabrication of the main housing. Schneidmiller discloses an insect trap that teaches the use of a bright yellow color to attract wasps or the like. The insects enter into the trap through a bottom element (45) that is colored yellow. In column 6, lines 16-19, Schneidmiller explains that said bottom element is made of an, "opaque material so that the base prevents the passage of light", he further states in column 7, lines 9-13, how the entrance appears darker to the insect upon entry into the trap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ritchey's device by painting it a bright color that would provide a more drastic contrast and make the entrance appear dark, thus making it more attractive to bees or wasps.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchey as applied to claims 1, 2, 4, and 5 above, and further in view of Rimback.

Art Unit: 3644

Ritchey discloses the claimed invention except it is not constructed of a single piece of molded plastic. Rimback discloses a bee trap, as described above, that includes all the limitations cited in claim 6, and further states in column 3, line 30, that the single plastic mold provides a simpler manufacturing process. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ritchey's device by making is a single piece of molded plastic in order to ease in the manufacturing process

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchey as applied to claims 1, 2, 4, and 5 above.

Ritchey discloses the claimed invention except he is not specific as to the diameter of the holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hole of a diameter ranging between 5/16 to 1/2 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback as applied to claims 8, 11 and 12 above.

Rimback discloses the claimed invention except the interior surface forming the edge of the hole is not substantially flat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Rimback's "frustro-conical entrance" (40, 42) smaller so that it is contained entirely in the side panel (12,14) and each edge of the entrance is flush with the interior and exterior walls of the side panels, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Art Unit: 3644

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback as applied to claims 8, 11 and 12 above, and further in view of Scheidmiller.

Rimback discloses the claimed invention except the color of the exterior surface around the hole is not specified. Scheidmiller discloses an insect trap that teaches the use of a bright yellow color to attract wasps or the like. The insects enter into the trap through a bottom element (45) that is colored yellow. In column 6, lines 16-19, Scheidmiller explains that said bottom element is made of an, "opaque material so that the base prevents the passage of light", he further states in column 7, lines 9-13, how the entrance appears darker to the insect upon entry into the trap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ritchey's device by painting it a bright color that would provide a more drastic contrast and make the entrance appear dark, thus making it more attractive to bees or wasps.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback as applied to claims 8, 11 and 12 above.

Rimback discloses the claimed invention except he is not specific as to the diameter of the holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hole of a diameter ranging between 5/16 to 1/2 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

11. Claims 14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback.

Art Unit: 3644

Rimback discloses the claimed method of providing a housing having a hollow interior, and periodically removing the trapped bees from said hollow interior except Rimback uses bait. It would have been obvious to one having ordinary skill in the art at the time the invention was made to remove the bait from Rimback's trap, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback as applied to claims 14 and 17-19 above.

Rimback discloses the claimed invention except the interior surface forming the edge of the hole is not substantially flat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Rimback's "frusto-conical entrance" (40, 42) smaller so that it is contained entirely in the side panel (12,14) and each edge of the entrance is flush with the interior and exterior side panels of the trap, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

13. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback as applied to claims 14 and 17-19 above.

Rimback discloses the claimed invention except the color of the exterior surface around the hole is not specified. Scheidmiller discloses an insect trap that teaches the use of a bright yellow color to attract wasps or the like. The insects enter into the trap through a bottom element (45) that is colored yellow. In column 6, lines 16-19, Scheidmiller explains that said bottom element is made of an, "opaque material so that the base prevents the passage of light",

Art Unit: 3644

he further states in column 7, lines 9-13, how the entrance appears darker to the insect upon entry into the trap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ritchey's device by painting it a bright color that would provide a more drastic contrast and make the entrance appear dark, thus making it more attractive to bees or wasps.

14. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback as applied to claims 14 and 17-19 above.

Rimback discloses the claimed invention except he is not specific as to the diameter of the holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hole of a diameter ranging between 5/16 to 1/2 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is (703)306-0360. The examiner can normally be reached on Monday-Thursday, 7:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on 703-306-4159. The fax phone numbers for the

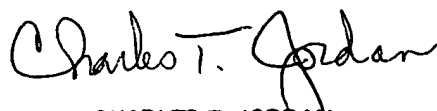


Art Unit: 3644

organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

SCA  
July 31, 2002

  
CHARLES T. JORDAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

**Attachment for PTO-948 (Rev. 03/01, or earlier)  
6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.